IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 515 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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ORIENTAL INSURNACE CO.LTD. - Appellant(s)
Versus
BABUBHAI KARIYABHAI VARLI & 3 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1 - 2, 4,
MR MD PANDYA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/07/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 03.10.88 passed by the Motor Accident Claims Tribunal, Navsari in MACP No.442 of 1985 whereby the said claim petition was allowed and the claimant was awarded a sum of Rs.51,920/- along with interest at the rate of 12% per annum payable by the original respondent nos. 3 & 4.

2. The original claimant had claimed compensation to the extent of Rs. 1,00,000/- for the injuries sustained by him as a result of the accident which occurred on

29.05.85 at about 3.30 pm when the original claimant alongwith other passengers was travelling in an auto bearing no. GTO 4237 driven by original opponent no.3. At that time. An S.T bus bearing no. GRS 6856 coming from the opposite direction collided with the auto as a result of which the original claimant had to get his leg amputated. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that in view of the specific provision contained in Section 95(2)(b)(ii) of the Motor Vehicles Act, the Insurance Company's liability in respect of passenger carried for hire or reward is limited to Rs.15,000/-. The relevant part of the said section as existing at the time of the accident reads as under:

> “95.(2) subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-
>
> (a) xxx xxx xxx
>
> (b) where the vehicle in which passengers are

carried for hire or reward or by reason of or in pursuance of a contract of employment, -

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all,

(ii) in respect of passengers, a limit of ten thousand rupees for each individual passenger."

3.1 Learned counsel for the appellant has also drawn my attention to Exh. 37 of the Record & Proceedings wherein it is clearly mentioned that the limits of the amount of the company's liability under Section II-1(i) in respect of any one claim or series of claims arising out of one event is Rs. 50000/-.

4. Learned counsel for the respondent-original claimant is not able to contest the aforesaid position. Therefore the award of the Tribunal is patently erroneous.

5. A perusal of the said section shows that the liability in respect of passengers, is limited to an extent of Rupees Ten Thousand for each individual passenger. The accident in question is of the year 1985

and therefore the liability would not be more than Rs.15,000/- qua the Insurance Company. This view is supported by a decision of this Court in the case of United India Fire and General Insurance Co. Ltd. Vs. Bachu Kaba Satrotia and ors., reported in 1986(1) GLR 463 wherein it is held that under section 95(2) of Motor Vehicles Act (IV of 1959) the liability of insurer in respect of a passenger carried for hire or reward by statute is limited to Rs.10000/- per individual passenger which was later on enhanced to Rs. 15,000/-.

6. In the premises aforesaid, the present appeal is partly allowed. It is held that the liability of the present respondent no.4 i.e. original opponent no.3 shall remain intact to meet the entire claim awarded with interest as awarded by the Tribunal. However, so far as the present appellant Insurance Company is concerned, the award will stand modified and the award amount awarded against the appellant will be Rs.15,000/- with running interest thereon at the rate of 12% per annum from the date of the application till realization. It will be open to the original claimant to recover the remaining amount from respondent no. 4 i.e. original opponent no. 3. The remaining amount lying in the FDR along with interest shall be refunded to the Insurance Company. If

the amount has already been withdrawn by the original claimant the same shall be recovered from present respondent no.4. The award of the Claims Tribunal shall stand modified accordingly. No order as to costs.

[K.S. JHAVERI, J.]

Divya//